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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR**

CRIMINAL APPLICATION (APL) NO.956 OF 2021

Dr.Virendra Keshavrao Jumde
Aged about 51 years,
Occupation : Service,
R/o Godrej Anandam, Umred
Road, Nagpur.

..... **Applicant.**

:: V E R S U S ::

1. The State of Maharashtra,
Through Police Station Officer,
Police Station Saoner, Tahsil
Saoner, District Nagpur.

2. Ku.Achal Bhojraj Kokade,
Aged about 18 years,
Occupation : Education,
R/o C/o Jagdish Saoji, Near
Haribhau Admane College, Saoner,
Tahsil Saoner, District – Nagpur,
Also R/o Village Bidoni, Tahsil
Saunsar, District – Chhindwara
(Madhya Pradesh).

..... **Non-applicants.**

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Shri Anil S.Mardikar, Senior Counsel with Shri A.R.Ingole, Counsel
for the Applicant.

Shri A.V.Muley, Counsel for Non-applicant No.2.

Shri V.A.Thakare, Additional Public Prosecutor for Non-applicant
No.1/State.

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CORAM : **ROHIT B.DEO & URMILA JOSHI PHALKE, JJ.**

DATE : **OCTOBER 19, 2022**

ORAL JUDGMENT (Per : Urmila Joshi-Phalke, J.)

1. Heard learned senior counsel Shri Anil S.Mardikar with
Advocate Shri A.R.Ingole for the applicant, learned counsel Shri
A.V.Muley for non-applicant No.2 – complainant and learned

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Additional Public Prosecutor Shri V.A.Thakare for non-applicant No.1 – State. **Rule.** Rule made returnable forthwith and heard finally.

2. By this application under Section 482 of the Code of Criminal Procedure, the applicant seeks quashment of First Information Report No.426/2021 registered with non-applicant No.1 – Saoner Police Station, District Nagpur for offences punishable under Sections 354 and 504 of the Indian Penal Code and under Sections 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 (for short, "**the POCSO Act**").

3. Non-applicant no.2 – victim girl had lodged report at Saoner Police Station, District Nagpur alleging that at about 5:30 pm, the applicant came to her house wearing half pant by consuming liquor and with an intention to molest her held her hand and asked her to call her employer namely Jagdish Saoji. It is further alleged that somehow she managed to release her hand and called her employer Jagdish Saoji. It is further alleged that the applicant asked said Jagdish Saoji to vacate the house by using abusive language. She, thereafter, narrated the incident to her father and her employer. She went to the police station along with her father and lodged the report. On the basis of the report, the police registered the crime for offences punishable under Sections

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354 and 504 of the Indian Penal Code and under Sections 8 and 12 of the POCSO Act.

4. It is contention of the applicant that allegations made against him in the First Information Report are baseless. The applicant is a permanent resident of Nagpur and serving as Principal in Haribhau Admane College, Saoner, District – Nagpur. The said college is situated beside river at Saoner and is also adjacent to the land owned by Jagdish Saoji. Said Jagdish Saoji had encroached over land of the College and, therefore, relations between said Jagdish Saoji and the management of the College were strained. Said Jagdish Saoji had kept father of the victim as a Caretaker to protect his possession. The victim girl is aged about 18 years and, therefore, provisions of the POCSO Act are not applicable against him. He further submitted that he only visited the spot of the incident and informed the victim girl to call her employer. There was no intention of the applicant to outrage the modesty of the victim girl. Due to the dispute between the management of the College and employer of the victim girl, a false report is lodged against him. He further contended that allegation that he had been to the house of the victim girl by consuming liquor is baseless. Hence, no offence is committed and the First Information Report deserves to be quashed and set aside.

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5. The application is strongly opposed by learned counsel for non-applicant No.2 – complainant and learned Additional Public Prosecutor Shri V.A.Thakare for the State on the ground that the offence is of serious in nature. They submitted that since the applicant outraged the modesty of the victim girl and since the same is an offence of moral turpitude, the application deserves to be rejected.

6. Learned senior counsel Shri Anil S.Mardikar for the applicant, submitted that the applicant had been to the spot of the incident to communicate Jagdish Saoji who had encroached over the land of the college wherein the applicant is serving. He only informed the victim girl to call her employer. No other incident had taken place. He further submitted that even if allegations against the applicant are accepted, no where it reveals that with an intention to outrage the modesty of the victim girl the applicant had held her hand. There should be an intention behind the act in view of Section 354 of the Indian Penal Code and as such provisions of Sections 8 and 12 of the POCSO Act are not attracted. He further submitted in view of Guidelines issued by the Honourable Apex Court in the case of The State of Haryana vs. Bhajan Lal reported at 1992 AIR 604 wherein the Honourable Apex Court held that where allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their

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entirety do not *prima facie* constitute any offence or make out a case against the accused, the High Court can exercise its extraordinary jurisdiction and inherent powers. He submitted that no offence is made out against the applicant and hence the First Information Report registered against the applicant deserves to be quashed and set aside.

7. Learned Additional Public Prosecutor Shri V.A.Thakare for the State submitted that complainant is victim girl who is below 18 years of age and the applicant had held her hand with an intention to outrage her modesty and, therefore, the offence is made out. Learned counsel Shri A.V.Muley for non-applicant No.2 – complainant reiterates the said submission made by learned Additional Public Prosecutor for the State.

8. Before entering into merits of the case, let us first examine relevant provisions to see whether Section 354 of the Indian Penal Code and Sections 8 and 12 of the POCSO Act are applicable to the present case. It would be useful to reproduce Section 354 of the Indian Penal Code, which reads thus:

"Section 354 : Assault or criminal force to woman with intent to outrage her modesty. -
Whoever assaults or uses criminal force to any woman, intending to outrage or knowingly it to be likely that he will thereby outrage her

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modesty, [shall be punished with imprisonment of either description for a term which shall not be less than one year but which may extend to five years, and shall also be liable to fine].”

9. For attracting the provision under Section 354 of the Indian Penal Code, intention is paramount consideration. The wordings of Section 354 of the Indian Penal Code itself states that whoever assault or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which shall not be less than five years but which may extend to seven years and shall also be liable to fine.

10. The offence is also registered against the applicant under Sections 8 and 12 of the POCSO Act. Whether sexual assault was committed by the applicant or not is to be seen from the definition of sexual assault. The definition of sexual assault is given under Section 7 and punishment is given under Section 8 of the POCSO Act. It would be useful to reproduce Sections 7 and 8 of the POCSO Act, which read thus:

"Section 7 : Sexual assault. - Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or

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any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault."

"Section 8 : Punishment for sexual assault. -
Whoever, commits sexual assault, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to five years, and shall also be liable to fine."

11. Section 7 of the POCSO Act defines offence of sexual assault. It provides that a person is said to commit sexual assault if he with sexual intent touches the vagina, penis, anus, or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration. Section 8 of the POCSO Act provides punishment for the sexual assault.

12. Likewise, definition of sexual harassment is given under Section 11 of the POCSO Act and it would also be useful to reproduce, which reads thus:

"Section 11 : Sexual harassment. - A person is said to commit sexual harassment upon a child when such person with sexual intent,-

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(i) utters any word or makes any sound, or makes any gesture or exhibits any object or part of body with the intention that such word or sound shall be heard, or such gesture or object or part of body shall be seen by the child; or

(ii) makes a child exhibit his body or any part of his body so as it is seen by such person or any other person; or

(iii) shows any object to a child in any form or media for pornographic purposes; or

(iv) repeatedly or constantly follows or watches or contacts a child either directly or through electronic, digital or any other means; or

(v) threatens to use, in any form of media, a real or fabricated depiction through electronic, film or digital or any other mode, of any part of the body of the child or the involvement of the child in a sexual act; or

(vi) entices a child for pornographic purposes or gives gratification therefor."

The said Section 11 of the POCSO Act defines the offence of sexual harassment which says that a person is said to commit sexual harassment upon a child when such person with

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sexual intent, (i) utters any word or makes any sound, or makes any gesture or exhibits any object or part of body with the intention that such word or sound shall be heard, or such gesture or object or part of body shall be seen by the child; or (ii) makes a child exhibit his body or any part of his body so as it is seen by such person or any other person; or (iii) shows any object to a child in any form or media for pornographic purposes; or (iv) repeatedly or constantly follows or watches or contacts a child either directly or through electronic, digital or any other means; or (v) threatens to use, in any form of media, a real or fabricated depiction through electronic, film or digital or any other mode, of any part of the body of the child or the involvement of the child in a sexual act; or (vi) entices a child for pornographic purposes or gives gratification therefor. with sexual intent. Section 12 of the POCSO deals with the punishment for sexual harassment.

13. In the present case, there is no allegation against applicant that with a sexual intent he had done the aforesaid act. To attract provisions of Section 12 of the POCSO Act, sexual harassment should be in view of the various categories mentioned in Section with sexual intent. Admittedly, there is no allegation against the applicant that he had uttered any word or made any sound, or made any gesture or exhibited any object or part of body with intention that such word or sound shall be heard, or such

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gesture or object or part of body shall be seen by the child. There is also no allegation against the applicant that he asked the victim girl to exhibit her body or any part of her body, shown any object to the victim girl in any form or media for pornographic purposes, or followed or watched or contacted the victim girl either directly or through electronic, digital or any other means or enticed the victim girl for pornographic purposes. Thus, none of ingredients are made out from recital of the First Information Report to attract these provisions.

14. For attracting Section 354 of the Indian Penal Code, ingredient of assault or criminal force to woman with intent to outrage her modesty is essential. In the present case in hand, the only allegation against the applicant is that he held hand of the victim girl and asked her to call her employer Jagdish Saoji. Admittedly, no direct evidence would be available to infer the intention as intention of the person is inner compartment of his mind. However, the said intention can be gathered from the surrounding circumstances. In the present case, the only allegations, that the petitioner had held the hand of the victim girl and asked her to call her employer, are even if accepted at the face value, no offence is made out against the applicant. There is no allegation against the applicant that he used any criminal force while holding the hand of the victim girl.

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15. On the aforesaid touchstone and considering facts on record, we do not find that any of allegations made in the First Information Report discloses offence punishable under Section 354 of the Indian Penal Code to show that the applicant had outraged the modesty with sexual intent and sexually assaulted or sexually harass the victim girl.

16. Having observed that offences under Section 354 of the Indian Penal Code and under Sections 8 and 12 of the POCSO Act are not made out, the offence under Section 504 of the Indian Penal Code is also not made out as from the recital of the First Information Report it no where discloses that there was any provocation from the applicant by raising any alarm or abuses.

17. In this view of the matter, the offence under Section 354 of the Indian Penal Code as well as offences under Sections 8 and 12 of the POCSO Act is not made out and criminal proceedings can be abuse of process of law when allegations do not disclose any offence or there are material on record from by which the Court can reasonably arrive at a finding that the proceedings are abuse of process of the Court. In the result, we are of considered view that if the applicant is posed to face the criminal trial, it would amount to miscarriage of justice.

18. In view of the above, we pass following order:

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ORDER

1) The criminal application is allowed.

2) First Information Report No.426/2021 registered with non-applicant No.1 – Saoner Police Station, District Nagpur for offences punishable under Sections 354 and 504 of the Indian Penal Code and under Sections 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 is hereby quashed and set aside.

The writ petition stands allowed and disposed of. Rule is made absolute in aforesaid terms.

(URMILA JOSHI-PHALKE, J.)

(ROHIT B.DE0, J.)

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